

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31157  
Docket No. SG-31308  
95-3-93-293

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(National Railroad Passenger Corporation  
( (AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (Amtrak(S)):

Claim on behalf of M. Mazenkas for payment of 12 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Appendix F, when it assigned a junior employee to perform overtime service on September 28, 1991, and deprived the Claimant of the opportunity to perform the work. Carrier's File No. NEC-BRS(S)-SD-585. General Chairman's File No. RM2282-120-592. BRS File Case No. 8960-Amtrak(S)."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The dispute in this case centers around Carrier's use of a Foreman who is regularly assigned to a line truck crew to drive the line truck in the performance of a switch machine replacement installation which took place in the territory of the Claimant Maintainer and involved overtime work.

The Organization's claim alleged that Carrier was in violation of agreed upon Appendix F which provides a procedure for overtime assignments. It contended that the Claimant had greater seniority than the Foreman and therefore Claimant should have been accorded the opportunity to perform the overtime work. The Organization asserted that "the operation of a line truck along with the mounting, wiring and testing of a switch machine is work normally accruing to the positions of Signalmen or Signal Maintainers." It further contended that "Carrier failed to sustain its assertion that the work in question accrued to a junior foreman and not the Claimant."

The Carrier insisted that the language of Appendix F, specifically the agreed upon guidelines for the allotment of overtime work, supported the action taken in this instance. Carrier further argued that the Organization, as the moving party, failed to provide any evidence to support its allegation that Claimant should have been used to drive the line truck. Additionally, Carrier asserted that the Organization failed to support its bare assertion relative to the amount of work performed or the length of time involved by the Foreman on the claim date.

Appendix F is an Agreement dated January 30, 1986, which provides a procedure for calling Signal Department employees for work involving Maintainers outside of their regular working hours. There is an unchallenged, agreed upon set of guidelines for the allotment of overtime work in effect on the territory in question which contains the following language:

"Planned overtime is defined as work that is known about more than 24 hours in advance or by Friday noontime for weekend work. Planned overtime will first be offered to the person or persons who have performed more than 50% of the work on a given job (as defined by the work order number) during the previous 14 days. If a planned overtime situation requires, in the opinion of a supervisor, a crew to perform specialized work or a foreman or inspector to perform work particular to their scope, those persons will be called. If more persons are required for the planned overtime, work will next be offered from the planned overtime list.

The planned overtime list will be made up persons requesting to be on that list with the section maintainer on the top. The rest of the list will be in order of signalman's seniority. If the services of a foreman or inspector are required (at the supervisor's discretion)

those persons will be called in order of class seniority from the same planned overtime list."

From the Board's review of the case record as developed on the property, the Board is convinced that the agreed upon Agreement language quoted above specifically permitted the use of the line truck Foreman to drive the line truck in this particular planned overtime situation. The Board is further convinced that the Organization failed to support with any probative evidence its assertions relative to the performance of other work by the Foreman. Contrary to the Organization's contention that the Carrier failed to sustain its assertions relative to the use of the Foreman, the primary burden rests squarely on the Organization to prove by probative evidence, Agreement language or convincing past practice that the actions as taken by the Carrier violated some Agreement Rule or, in the absence of a Rule, some established practice.

Rule 2 - CLASSIFICATIONS does not reserve the use of a line truck to any particular class of employee. In this case, the specialized work which was performed by the line crew Foreman consisted foremost of driving the line truck which was a regular part of his line crew. He was properly used in accordance with the latitude granted to the Carrier by the agreed upon guidelines referenced above. The claim as presented is, therefore, denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.